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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-sixth session

SUMMARY RECORD OF THE 1081st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 March 1995, at 3 p.m.

Chairman: Mr. GARVALOV

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The meeting was called to order at 3.20 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN welcomed Mr. Ferrero Costa, who had been unavoidably prevented from attending the first week of the session.

2. Mrs. KLEIN-BIDMON (Representative of the Secretary-General) announced that in response to a wish expressed by members of the Committee, arrangements had been made for the attendance of Mr. Glélé-Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, during the final week of the session, to hear the Committee's views and discuss closer cooperation.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Draft letter from the Chairman to the Ambassador of the Federal Republic of Yugoslavia

3. The CHAIRMAN recalled that the Committee was due in the course of the session to consider additional information from the Federal Republic of Yugoslavia, requested under article 9, paragraph 1, of the Convention. By letter dated 15 February 1995, it had been informed that the Government of that country did not intend to send a delegation to attend the discussion.

4. He called the Committee's attention to and invited comments on a draft letter he had prepared for transmission to the Ambassador of the Federal Republic of Yugoslavia. The text of the draft letter read as follows:

"Excellency,

"I refer to your letter of 27 February 1995 which transmits the position of your Government on the invitation extended to it to participate in the consideration by the Committee on the Elimination of Racial Discrimination of the additional information supplied by your Government pursuant to a request of the Committee.

"May I convey to you the great regret of the Committee concerning the decision of your Government not to send a delegation to meet with it during its current session. While the absence of a delegation does not preclude consideration of the information which has been supplied, it does, however, greatly hinder the process of dialogue. Indeed, it may be observed that the Committee considers past dialogue with your Government to have been most valuable.

"Note has been taken of the reasons presented by your Government as underlying its position. In this regard the Committee would like to restate its view that it has always considered your country as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination and that it, in its actions, will continue to proceed on the basis of this understanding.

"It is the hope of the Committee that your Government will reconsider its decision in sufficient time to allow for a dialogue to occur during the present session.

"Please accept, Excellency, the assurances of my highest consideration."

5. Mr. van BOVEN said that he had no objection to the draft. He confirmed the understanding that the Committee continued to consider the Federal Republic of Yugoslavia as a State party to the Convention. The Committee might perhaps wish also to emphasize its concern to ensure compliance by States with their obligations in respect of instruments to which they were party.

6. To that end, the second sentence of the third paragraph of the draft letter might be amended to read: "In this regard the Committee would like to restate its view that it has always considered your country as a State party to the International Convention on the Elimination of All Forms of Racial Discrimination and bound by the provisions of the Convention ...", the remainder of the text remaining unchanged except perhaps for an editorial adjustment to indicate that the word "its" referred to the Committee.

7. Mr. ABOUL-NASR said that he agreed with Mr. van Boven and supported his suggested amendment. The implication was that the Federal Republic of Yugoslavia was duty bound to provide the Committee with the information requested.

8. Concerning the final sentence in the second paragraph of the draft letter, he could not agree that past dialogue with the Government had been particularly "valuable". What was important was the future and, for that reason, the sentence might be replaced by: "The Committee considers the continuation of the dialogue with your Government to be most valuable".

9. Mr. WOLFRUM said that he viewed the past dialogue as having been very important for the Committee, but he nevertheless endorsed Mr. Aboul-Nasr's views concerning the need to look ahead. If the second paragraph was to be amended, he suggested that the emphasis should be placed on continued dialogue, as a significant, if not the only, means of ensuring effective implementation of the Convention.

10. Mr. van Boven's amendment to the third paragraph, supported by Mr. Aboul-Nasr, seemed to him superfluous: the fact of being a State party to a treaty implied commitment to its provisions. However, he could accept the added emphasis, especially if the final wording brought out the fact that during the dialogue so far the Committee had treated its interlocutor as a State party.

11. Mr. de GOUTTES said that the draft letter was generally appropriate, but he nevertheless approved the changes in the second paragraph suggested by Mr. van Boven, Mr. Aboul-Nasr and Mr. Wolfrum. He warmly supported Mr. van Boven's amendment to the third paragraph: considering a country to be a State party to the Convention and considering it to be bound by that instrument were not the same thing.

12. He was somewhat concerned at the risk that, in considering the Federal Republic of Yugoslavia a State party to the Convention, the Committee might be seen as supporting one of the claims made by the Yugoslav delegation against the decision taken by the meeting of States parties. For that reason, he would prefer to see Mr. van Boven's amendment modified to read: "In this regard the Committee would like to restate its view that it has always considered your country as bound by the provisions of the Convention, as a State party to the Convention ...".

13. Responding to a request for clarification from Mr. SHAHI, Mr. van BOVEN repeated his proposal, as amended, by Mr. Aboul-Nasr, whose formula he approved. He saw merit in Mr. de Gouttes' suggestion. What should be stressed above all was the State party's obligation to implement the provisions of the Convention. That might be achieved if, in the second sentence of the third paragraph, the phrase "and bound by the provisions of the Convention" was replaced by "and thereby duty bound to implement its provisions". The final choice of wording should be left to the Chairman, as the author of the original draft.

14. Mr. WOLFRUM suggested that Mr. Aboul-Nasr's amendment to the final sentence in the second paragraph of the draft should be further amended, to read: "The Committee considers that continuation of the dialogue with your Government will contribute to the implementation of the Convention".

15. He believed the States parties had not denied that the Federal Republic of Yugoslavia was bound by the Convention and was a State party to it. They had, however, excluded the Government of that country from participating in their meeting. That was not the same thing. He fully supported the wording just proposed by Mr. van Boven for the second sentence of the third paragraph, as it best reflected the situation.

16. Mr. SHAHI approved the wording for the second paragraph of the draft proposed Mr. Aboul-Nasr and Mr. van Boven. He also supported the proposed amendment to the third paragraph, but he suggested, in the interest of clarity, that the words "your country" in the amended text be replaced by "the Federal Republic of Yugoslavia (Serbia and Montenegro)".

17. Mr. van BOVEN stressed the importance of referring in the Chairman's letter to compliance with obligations under the Convention. He recalled that, in a letter dated 26 January 1995, the Federal Republic of Yugoslavia (Serbia and Montenegro) had reiterated the contention that the suspension of its legitimate right to participate in the meetings of the States parties signified at the same time the suspension of its obligations under the Convention. That was a worrying matter which definitely called for an explicit or implicit response on the part of the Committee.

18. Mr. de GOUTTES said that he approved the amendments proposed by and the comments of Mr. van Boven. He could also accept by Mr. Shahi's suggestion.

19. The CHAIRMAN thanked the members of the Committee for their valuable suggestions, which appeared to him to be mutually compatible. He would redraft the letter accordingly.

DRAFT GENERAL RECOMMENDATION ON ARTICLE 5 (continued)

20. Mr. de GOUTTES said that, while he shared the view that a proliferation of general recommendations was undesirable, an expression of the Committee's views on article 5 was necessary.

21. He did not consider that, in the draft recommendation, the Committee was, as it were, talking to itself. For example, the statement in paragraph 2 that article 5 of the Convention did "not of itself create rights", but presumed them to be guaranteed, raised the broad issue of the interpretation of article 5, concerning which a great deal had been said and written outside as well as within the Committee. Similarly, the opinion, expressed in paragraph 5, that the rights and freedoms mentioned in article 5 did not constitute an exhaustive list should - he believed - be widely publicized. All too often, in his experience, there was a tendency to forget, when interpreting article 5 of the Convention, that the adverb "notably" in the introductory part of the article qualified as indicative only the list of rights that followed. He expressed his general approval of the draft recommendation.

22. Mr. van BOVEN said that he agreed with the view - which, moreover, appeared to be sanctioned by article 9, paragraph 2, of the Convention - that the Committee's recommendations were addressed to the States parties. It often transpired, however, in the course of the Committee's dialogue with States parties that the latter were not fully - if at all - aware of those recommendations. He therefore wondered whether the secretariat, when inviting States parties to prepare their reports and - presumably - circulating the Committee's guidelines, might not also draw their attention to the Committee's general recommendations.

23. With reference to paragraph 4 of the present draft recommendation, he queried the suitability of the words "character" and "universal", the usual connotations of which might not be appropriate in the context. As he understood it, the intention was to point out that article 5 mentioned different categories of rights, some of which related to all persons finding themselves under a State's jurisdiction, and others to the State's citizens. If that understanding was correct, the draft might be modified accordingly. By and large, however, he considered the text proposed by Mr. Wolfrum to be both useful and timely.

24. Mr. VALENCIA RODRIGUEZ said that the draft general recommendation constituted a valuable interpretation of the scope of article 5. However, some parts of the text appeared addressed to the Committee itself and others to the States Parties, and the distinction between the two was not always clear. The wording should be modified accordingly.

25. Mr. SHAHI said that the draft recommendation could be made more precise. For example, paragraph 2 stated that article 5 of the Convention did not of itself create rights: was that remark intended to refer to civil, political, economic, social or cultural rights? Paragraph 5 stated that the rights and freedoms mentioned in article 5 did not constitute an exhaustive list: surely it would be useful to indicate what other rights and freedoms might require to be considered.

26. He wished to know whether the Committee's general recommendations and past jurisprudence had ever been collected together in a single document.

27. The CHAIRMAN said that the Committee's general recommendations were reproduced in a document entitled "Compilation of general comments and general recommendations adopted by human rights treaty bodies" (HRI/GEN/1/Rev.1).

28. Mr. BANTON said that the forthcoming new edition of the reporting manual provided for the guidance of States Parties would be in looseleaf form so that new material, such as new general recommendations, could easily be added. He expressed his support for Mr. Wolfrum's draft.

29. Mr. ABOUL-NASR said that he had no objection to the basic idea underlying the draft recommendation, although he did not really see the point of the Committee making recommendations to itself. He too was concerned about the use of the words "character" and "universal" in paragraph 4. The statement that the rights and freedoms mentioned in article 5 were "not all of the same character" was in his view contrary to the spirit of article 5; it introduced the idea that some rights were more important than others, a notion that had been specifically rejected by the authors of the Convention. In the same way, the use of the word "universal" implied that some rights were not universal. He was sure that that had not been Mr. Wolfrum's intention.

30. Mr. CHIGOVERA said that paragraph 2 did not accurately convey the spirit of article 5, as he understood it. Article 5 did not presume that certain rights were guaranteed; it merely presumed that they existed. He therefore suggested that paragraph 2 should be amended to read: "Article 5 of the Convention does not of itself create rights, but presumes the existence of these rights; it obliges States to prohibit and eliminate racial discrimination and to guarantee equality in the enjoyment of human rights as they are provided in the country concerned".

31. Mr. FERRERO COSTA said that a general recommendation on article 5 would be useful because States parties frequently appeared not fully to appreciate the article's scope. He generally approved of Mr. Wolfrum's draft and hoped that, with some amendment, it might be adopted at the present session.

32. The most important point of the whole recommendation was contained in the second sentence of paragraph 2, namely the assertion that article 5 did not of itself create rights. As the most important point in the paragraph, it should come at the beginning: however, it was not actually true, since article 5 did establish the right to be free from racial discrimination.

33. He too was concerned about the words "character" and "universal" in paragraph 4 and he agreed that it was important to distinguish between recommendations to the Committee itself and recommendations to the States parties. He therefore suggested that the second sentence of paragraph 4 should be amended to read: "States parties will therefore report separately to the Committee on the way in which they protect each of the rights and freedoms listed".

34. Mr. YUTZIS said that the Committee should decide once and for all whether the recommendation was intended for its own guidance or for the guidance of

States parties. In his opinion, the primary purpose of article 5 was to ensure that the Convention was implemented on a basis consistent with the two International Covenants on Human Rights.

35. Mr. WOLFRUM thanked members for their comments on the draft. He could easily incorporate in it the amendments to paragraph 2 suggested by Mr. Shahi and Mr. Chigovera as well as a reference to the right to be free from discrimination. He would also take into account the suggested modifications of paragraph 3.

36. In paragraph 4, his intention had been to make it clear that some rights, such as the right to participate in an election, were enjoyed only by the citizens of a country, whereas others, such as the right to equal treatment before a court, were enjoyed by everyone living in the country. He hesitated to use the term "residents' rights" because that might be misinterpreted as meaning only those people who were legally entitled to live in the country. He hoped that some similar and generally acceptable term could be found. In the second sentence of paragraph 4 the word "separately" meant "one by one" and implied no hierarchy. The text could be amended to make that clear.

37. The reason for the first sentence in paragraph 5 was that he did not wish to refer only to the rights mentioned in the International Covenants on Human Rights, for he could imagine situations in which a right existed in a particular country but not in international law. For example, if a State party granted the right to kindergarten attendance, but granted it only to children who were white, that would be a violation of the Convention because it would involve discrimination. The use of the word "notably" in article 5 of the Convention indicated that the list was not exhaustive. The first sentence of paragraph 5 was concerned with the contextual interpretation of the first sentence of article 5 of the Convention. If the Committee disagreed with his view, he could amend the substance of the text; if it basically agreed, a drafting change would suffice. In any case, all the purely drafting changes that had been suggested would be made.

38. Mr. ABOUL-NASR said that, in the light of article 1, paragraph 2, of the Convention, he could not agree that there would be anything wrong in making a distinction between citizens and non-citizens, although discrimination would be involved if a distinction were made between black and white people.

39. The CHAIRMAN said that the Committee could discuss a revised draft recommendation to be submitted by Mr. Wolfrum at a later meeting.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 3) (continued)

40. The CHAIRMAN suggested that the Rapporteur should be invited to bring the Committee up-to-date on events relating to the Third Decade to Combat Racism and Racial Discrimination and that the Committee should be provided with information on the proceedings of the fifth meeting of chairpersons of human rights treaty monitoring bodies.

41. Mr. ABOUL-NASR said that the recent events in Chechnya were a topic of great current importance. He understood that Mr. Banton had been consulting members on it; perhaps an appropriate time for a discussion of that question could be chosen.

42. The CHAIRMAN said that a discussion on Chechnya would be held as soon as possible, when Mr. Banton had a text ready.

43. Mr. WOLFRUM emphasized the need for a well prepared text and also for the presence of Mr. Rechetov at the discussion. The Committee might perhaps draw attention to other cases under the urgent procedures mechanism. He cited the case of Papua New Guinea, a nearly forgotten issue. In regard to it the Committee could state only that all efforts to find a peaceful solution had failed. The only information which it had so far on the subject had come from non-governmental organizations, although it had requested information from the Government concerned and the secretariat. Some information on the Chiapas issue would also be welcome. The Committee had considered that question briefly at the previous session but had taken no action. A further discussion would be useful.

44. The CHAIRMAN drew attention to the Secretary-General's report on the Papua New Guinea island of Bougainville contained in document E/CN.4/1995/60/Add.1. He pointed out that the other two topics mentioned by Mr. Wolfrum had been included in the list of questions to be discussed at short notice at the present session.

45. Mr. de GOUTTES recalled that in 1994 the Committee had discussed the very serious situation in Algeria but had been unable at the time to prepare a related text centred on racial or ethnic discrimination. That question should not be overlooked by the Committee.

46. The CHAIRMAN confirmed that the Committee had sought to reach a consensus on the situations in Algeria and Mexico, but consideration of those issues had been postponed until the present session.

47. Mr. ABOUL-NASR said that, while he was prepared to consider issues falling within the Committee's competence, he was not willing to discuss other human rights matters that did not involve racial discrimination.

48. The CHAIRMAN observed that there appeared to be general agreement that the Committee should not discuss topics that were the responsibility of other bodies.

49. Mr. YUTZIS recalled that the Committee had recently received a report from a person dramatically calling for help for Burundi, where the present situation could soon have unforeseeable consequences. Two ethnic groups were fighting one another, and it would be regrettable if the Committee later had to lament that it had not done everything possible to prevent a tragedy. Some action needed to be taken under the early warning procedure. The Committee could at least collect as much information as possible and make a recommendation before serious events occurred.

50. The CHAIRMAN pointed out that the Committee had already discussed the case of Burundi.

51. Mrs. SADIQ ALI said that she fully agreed with Mr. Yutzis. Recent press reports indicated that the situation in Burundi was most serious.

52. Mr. AHMADU said that it might be appropriate to invite the secretariat to provide the Committee with an up-to-date briefing. The situation in Burundi was still urgent. In the case of the situation in Mexico, he had submitted a text which had been rejected by the Committee's Latin American members. However, the more the situation developed, the more he felt that he had been right. In many countries there was a United Nations office or the High Commissioner for Human Rights was active; their views should be made available to the Committee. Events had moved very quickly in Burundi. The Committee could give advice, but what was really needed in that country was material assistance.

53. The CHAIRMAN said that he was already considering the possibility of rearranging the Committee's schedule so as to find time to take up the cases that had been mentioned. However, it was not for him to decide which cases required consideration under the early warning procedure. A consensus was required.

54. Mr. de GOUTTES thanked Mr. Yutzis and Mrs. Sadiq Ali for drawing attention to the situation in Burundi, which fell fully within the Committee's competence because ethnic conflict was involved. The Security Council had already requested that all persons suspected of genocide should be arrested and brought to trial. An information meeting at which the secretariat could give a full account of the latest situation in Burundi and Rwanda was needed as a first step towards the preparation by the Committee of an informed text.

55. Mr. LECHUGA HEVIA said that the situations in Algeria, Mexico, Burundi and perhaps also Rwanda clearly called for urgent consideration by the Committee. He suggested that the Chairman or the Bureau should propose a specific date for the consideration of those cases.

56. Mr. van BOVEN said that, although he would not stand in the way of discussion of any topic that the Committee might wish to consider, he had some misgivings about considering cases that were already being dealt with by other United Nations bodies and to which the Committee could not really make a useful contribution. He therefore agreed that it was important for it to be fully informed of action taken by other bodies, including the Office of the United Nations High Commissioner for Refugees (UNHCR), and that a specific date should be agreed upon for such a briefing, after which the Committee could determine the genuine, distinct and meaningful contribution it could make; it should not take action merely for the sake of being seen to be involved.

57. The CHAIRMAN pointed out that it was under the early warning and urgent procedures that the Committee had previously discussed the situation in certain countries. He agreed that the Committee should not proceed without additional information and agreement on the cases to be discussed. He would certainly discourage the taking of any action by the Committee merely for the

sake of appearances. After reviewing a case, the Committee might well decide it had nothing new to add, but it could make it clear that it was keeping the particular situation under review. In consultation with the secretariat and the Bureau, a specific time would be allocated for a briefing on action by other United Nations bodies and for a preliminary discussion.

58. Mr. FERRERO COSTA said in response to Mr. van Boven's remarks that there were situations, such as that in Burundi, that clearly fell within the Committee's mandate and should be considered under its early warning and urgent procedures. It was not because other bodies were investigating urgent cases that the Committee should not do so. While the Committee was aware of its limits, it should shoulder its responsibilities in cases of serious violations; it was not a matter of the Committee promoting its own image. In the case of Mexico, although Committee members from Latin American countries had in the past taken the view that that issue should not be discussed at that time, that did not constitute a precedent for failing to review the situation on another occasion, or for refraining from looking at other cases, such as that of the situation in Algeria. He agreed that information was needed and should be requested, but even if such information was not forthcoming, that should not be an excuse for inaction by the Committee on such important issues as Burundi.

59. Mr. SHAHI said that the various issues that had been deferred for consideration at the present session under the early warning and urgent procedures should be taken up without delay. The Committee should also decide, well before the end of the session, whether or not to consider the cases of Mexico and Algeria. The case of Chechnya was, in his view, an urgent matter. The informal consultations suggested by the Chairman should not preclude open debate in the Committee.

60. The cases of Burundi and Rwanda required urgent consideration. Even if up-to-date information was not always readily available, that did not absolve the Committee from its responsibility as the primary treaty body empowered to deal with cases of racism and racial discrimination. Referring to a report in a Pakistani newspaper quoting a recent statement by the United Nations High Commissioner for Human Rights to the Commission on Human Rights, he said that the High Commissioner himself had reportedly appealed for a reinforced United Nations presence and for increased measures to prevent human rights abuses in Burundi, where a human catastrophe was looming. Although he welcomed the information provided by Mr. Ahmadu, it was the Committee's duty to join with other human rights bodies in bringing moral pressure to bear and voicing its alarm.

61. Mr. SONG Shuhua said that it was important for the Committee to rationalize its procedures in order to complete its business at the present session. He therefore suggested that the Committee should draw up a list of priorities among the topics before it, spending more time on the more crucial issues and less on those it considered of minor importance.

62. The CHAIRMAN said that, in consultation with the Bureau and taking account of the time constraints, he would make arrangements for the discussion of cases the Committee considered important, having regard to the priority assigned to them.

63. Mr. BANTON, endorsing Mr. Song Shuhua's remarks concerning establishment of priorities, said that a distinction should be drawn between the Committee's broad responsibilities and its priorities. He was not in favour of devoting any substantial proportion of the Committee's time to the discussion of major current events over which the Committee could exert no influence. The main influence it could exercise was upon Governments, and in that respect the Committee should again distinguish between preventive and remedial action. It could do little by way of remedial action, which fell within the competence of other organs. Although, sometimes for diplomatic reasons, its preventive action had not been very successful in the past, that was an area which could and should be further developed. The situation in Chechnya was a case in point. He therefore argued in favour of speedy requests for additional information, which should be seen by States parties not as any implied criticism but as necessary to the Committee's work, especially in the case of States whose reports were long overdue. The scope of the Committee's responsibilities should be seen in the light of article 1, paragraph 1, of the Convention, which clearly specified that "racial discrimination" meant any distinction which had the purpose or effect of impairing equal enjoyment of human rights. A situation might develop in a country that was not initially discriminatory in purpose but had the effect of favouring or prejudicing one group rather than another.

64. Mr. YUTZIS drew attention to the conclusion adopted by the fourth meeting of persons chairing the human rights treaty bodies - set forth in paragraph 44 of the report of that meeting (A/47/628) - to the effect that where procedural innovations were required for the purpose of taking urgent preventive action in response to emergency situations involving human rights violations, such innovations should be considered as soon as possible. Among the procedures that the Committee might consider were some of the measures provided for in the working paper on early warning and urgent procedures adopted by the Committee at its 979th meeting and contained in annex III to document A/48/18. He drew attention in particular to the provision in that document for urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention (para. 8 (b)), and for criteria to be developed to guide the use of preventive measures, particularly in regard to triggering the mechanism and progressing towards increasingly active stages of the procedure (para. 9). Among the criteria for initiating the early warning mechanism was the presence of a pattern of escalating racial hatred and violence or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials (para. 9 (b) (iii)). One of the early warning measures envisaged was an offer by the Committee to send to States parties one or more of its members in order to facilitate the implementation of certain international standards or to help deal with specific problems (para. 10 (b)).

65. There was no doubt that the case of Burundi fell within the scope of the Convention and hence within the Committee's mandate. It should be given high priority because of the lessons learnt from Rwanda. The Committee should therefore obtain information on the situation in Burundi from various United Nations bodies, request the attendance of a representative of the State party for information on the current situation, and then, in the light of that information, adopt by consensus certain measures under the urgent and early warning procedure.

66. Mr. WOLFRUM said that he would like Macedonia to be added to the list of cases to be considered, since there were disturbing reports about the situation in that country.

67. He, too, wished to emphasize that a request for additional information from a State party implied no criticism of that State and should not be seen as such. Information was necessary to the Committee's work and was a means for it to engage in a dialogue with the State concerned.

68. The CHAIRMAN said that he would submit to the Committee the following day the Bureau's proposals for the timing of substantive further discussion under item 3. He informed the Committee that he had been invited to address the Commission on Human Rights on the following day on issues of common concern to the Committee and other treaty bodies.

The meeting rose at 6 p.m.